tice was authorized to summon a jury of twelve men to his assistance and herein arose the difficulty. The defendant in the present case was sued in a civil action before the justice of the peace. If the first proceedings were a trial by jury, then they could not be reviewed by a jury in the court above. But it appeared that the so-called jury of the justice's court was established by analogy with similar courts in New York; and it had become the recognized usage of these courts that the jury was no more than a body of referees, the judge having no authority, to direct as to the law or to set aside the verdicts. In the absence of such authority, there could be no true trial by jury, and so the court held.

So far the jury trial before the Supreme Court of the District would be regular. The next question was whether it would be unduly interfered with by the fact that a preliminary hearing had been held before the justice, — whether the defendant was entitled to a jury in the first instance. The case of *Callan* v. *Wilson*, 127 U. S. 540, had to be dealt with, where it was held that the defendant in a criminal prosecution for conspiracy could not be tried in a police court without a jury. The express ground of the decision was that the police court had no jurisdiction; but it was further said by way of dictum that the defendant was entitled to a jury before the proper court without any preliminary. That theory is distinguished in the present case; the court says the different considerations apply to the Seventh and Sixth Amendments, to criminal and to civil proceedings. In criminal prosecutions the prisoner is entitled to a "speedy trial," and his liberty is to be protected against undue process of law. This reasoning may differentiate the cases; if it does not, the theory of *Callan* v. *Wilson* should give way, for it seems to be based upon a narrow method of dealing with the constitutional guaranties. The decision of the principal case, at all events, is satisfactory; the provision for a jury trial before the appellate court would seem to give all the essential protection which the Constitution aimed to secure.

The opinion is also interesting as giving a hint of the probable attitude of the court in regard to the right of the inhabitants of our newly acquired islands to a jury trial. "It is beyond doubt at the present day that the provisions of the Constitution of the United States securing the right of trial by jury, whether in civil or in criminal cases, are applicable to the District of Columbia." Three cases are cited; *Callan* v. *Wilson*, *supra*, alone squarely decided the point, and the decision was not a fully considered one. At all events, the District of Columbia may be distinguished from territories generally. The remaining cases cited refer to other territories, — Iowa and Utah. *Webster* v. *Reid*, 11 How. 437; *Thompson* v. *Utah*, 170 U. S. 343. The Iowa case is based upon the Act of Congress which applied to Iowa the clauses of the Constitution; the Utah case had the same basis, although some dicta went further. See 12 HARVARD LAW REVIEW, 205. The point is not yet *res adjudicata* as to territories generally; but the court is showing no temper to reconsider its former dicta; and if the constitutional provisions are not applied to the Philippines, the result is likely to be accomplished only by distinguishing the Philippines from our formerly acquired territories.

WAR REVENUE ACT OF 1898.—The recent case of *Nicol* v. *Ames*, 19 Sup. Ct. Rep. 522, is notable since it passes upon an important clause of the War Revenue Act of 1898, but it seems to add no new point to the vexed

questions of taxation. One section of the Act imposed a tax on "each sale, agreement of sale, or agreement to sell any products or merchandise at any exchange or board of Trade or other similar place" and required a stamped memorandum to be delivered to the buyer. It was contended that this amounted to a tax on the property sold and so was a direct tax, but the court, refusing so microscopic and theoretical a point of view, declared it a tax on the privilege or facility of carrying on sales in a general market, and so clearly in the nature of a duty or excise. The decision seems most sensible. The "privileges" of bankers, brokers, and the like have been constantly taxed, and such a tax has been, and may be, administered by stamps as well as by a fixed license fee. It was contended that the tax was not uniform, since it did not include all sales, that it was unfair to discriminate between sales at exchanges and sales at other places, that this was substantially a tax on the right to transact business and that exchanges should not be thus singled out, but that contention simply shuts its eyes to the facts regarding exchanges. Sales at exchanges do differ radically from sales at any other place, "the privilege of effecting such sales is so far distinct as to create a reasonable and substantial ground for classification and for taxation when similar sales at other places are untaxed." *Gulf, Colorado, & Santa Fé Ry.* v. *Ellis*, 165 U. S. 150, 155. Again the tax is geographically uniform and by means of the stamps regulates the amount to be paid by the extent to which the privilege is used. Surely there can be no ground for objection on the score of uniformity.

Another point, this time in regard to the interpretation of the Act, is decided in the case, that a sale of live stock at the Union Stock Yards in Chicago counts within the statute as a sale "at any exchange, or board of trade, or other similar place." This construction, clearly in line with the decision as to the constitutional question in the main branch of the case, seems broad enough to include any place where buyers and sellers have exceptional facilities for transacting sales of chattels of any sort.

WRITTEN CONTRACTS AND EXTRINSIC EVIDENCE. — In *Violette* v. *Rice*, 53 N. E. Rep. 144 (Mass.), the plaintiff contracted with the defendant to take the part of "Bertha Gessler" in a play called "Excelsior, Junior." The agreement was in writing and required the plaintiff "to render services at any theatre." The contention was that the word "services" was orally agreed at the time of the contract to mean services in a particular part. But the court refused to vary the words of the contract by an extrinsic agreement which, it declared, contradicted the written language. An engagement for services was a general employment which could not be specially limited to a single part.

It is commonly stated that parol evidence is inadmissible to vary a written instrument. But this is merely stating a rule of substantive law under the guise of a rule of evidence. If the law of deeds or wills refuses to allow a certain claim or defence, parol evidence is of course inadmissible to prove it, for even if established it will do no good. Thayer, Preliminary Treatise on evidence, p. 409. The general rule, however, is by no means inflexible and the substantive law of writings often allows contemporaneous collateral matter to affect a written instrument. But the cases are not unanimous as to how far a court may wander from the document before it. *Naumberg* v. *Young*, 44 N. J. Law, 331,